

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

JABARI LYLES)
Plaintiff,)
vs.) CIVIL ACTION NO.
CHEGG, INC.,) 1:19-cv-03235-RDB
Defendant.)
_____)
Baltimore, Maryland
December 8, 2020
3:35 p.m.

**THE ABOVE-ENTITLED MATTER CAME ON FOR
TELECONFERENCE MOTIONS HEARING
BEFORE THE HONORABLE RICHARD D. BENNETT**

A P P E A R A N C E S

On Behalf of the Plaintiff:

CORY L. ZAJDEL, ESQUIRE
DAVID M. TROJANOWSKI, ESQUIRE
JEFFREY C. TOPPE, ESQUIRE

On Behalf of the Defendant:

DOUGLAS H. MEAL, ESQUIRE
MARK S. SAUDEK, ESQUIRE
DAVID T. COHEN, ESQUIRE

Also Present:

CATHERINE GAMPER, LAW CLERK

Reported by:

Ronda J. Thomas, RPR, CRR
Federal Official Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

P R O C E E D I N G S

THE COURT: Good afternoon, everyone. This is calling the matter of *Lyles L-Y-L-E-S versus Chegg C-H-E-G-G Incorporated*, a case which was closed here on April the 27th by my memorandum order of Paper Number 25, and we are conducting a hearing here today with respect to a pending Defendant's Motion For Clarification Or Modification of that order which is Paper Number 26.

We're conducting this by way of audio in light of the current pandemic and consistent with the Standing Order of the Court 2020-20 which actually now has been amended to be 2020-22 in terms of conducting virtual proceedings in light of the precautions taken as a result of the COVID-19 pandemic.

And as always I want to thank Catherine Stavlas, the Deputy Clerk of Court who coordinates all this. And specifically today the courtroom Deputy Clerk Katina Tyson as well as the Court Reporter Ronda Thomas here for their efforts in coordinating that. And as well as my law clerk, Catherine Gamper, who's also on this call.

So with that, if counsel would identify themselves for the record please? First for the Plaintiff?

MR. ZAJDEL: Thank you, Your Honor. This is Cory Zajdel on behalf of Jabari Lyles and on the phone with me are two additional counsel that can introduce themselves.

MR. TOPPE: Good afternoon, Your Honor. This is

1 Jeffrey Toppe also on behalf of Mr. Lyles. T-O-P-P-E.

2 **MR. TROJANOWSKI:** Good afternoon, Your Honor. David
3 Trojanowski also on behalf of Mr. Lyles. Trojanowski is
4 T-R-O-J-A-N-O-W-S-K-I.

5 **THE COURT:** Good afternoon to all of you. And you all
6 are with the Z Law Firm here in Timonium, Maryland. Correct?

7 **MR. ZAJDEL:** That is correct, Your Honor.

8 **THE COURT:** Good afternoon to all of you.

9 Then on behalf of the Defendant Chegg Incorporated?

10 **MR. SAUDEK:** I apologize for speaking over.

11 Good afternoon, Your Honor. Mark Saudek from
12 Gallagher Evelius & Jones on behalf of Chegg and with me also,
13 Your Honor, are co-counsel from Orrick who will introduce
14 themselves.

15 **MR. MEAL:** Thanks, Mark. Good afternoon, Your Honor.
16 Douglas Meal from Orrick on behalf of Chegg.

17 **MR. COHEN:** Good afternoon, Your Honor. David Cohen
18 from Orrick on behalf of Chegg as well.

19 **THE COURT:** Good afternoon to all of you. I gather
20 the only one, not that he has to be on the call, but Jonathan
21 Direnfeld from the Washington office of Orrick Herrington &
22 Sutcliffe is not on the line; is that correct?

23 **MR. COHEN:** That is correct, Your Honor.

24 **THE COURT:** Good afternoon to all of you. I apologize
25 if this has been sitting for a bit. We've been trying to catch

1 up on some matters with the confusion of partially opening and
2 partially closing down the courthouse again.

3 But essentially the matters here -- I think this has
4 essentially been ripe since October the 29th and so I apologize
5 for letting this sit for about four weeks or so.

6 But essentially the facts as I understand in my review
7 of my notes here are that this case arises out of a data breach
8 that occurred on about April 29 of 2018. And the Defendant
9 Chegg Incorporated experienced a data breach resulting in the
10 exposure of its customers' personally identifiable information.

11 And the Plaintiff Jabari Lyles essentially filed a
12 punitive class action lawsuit against Chegg which sought
13 redress for this data breach. And that lawsuit was filed in
14 the Circuit Court for Baltimore City and ultimately that was
15 then removed here to this Court on November 8, 2019, pursuant
16 to diversity of citizenship and pursuant to 28 U.S.C. Sections
17 1332(a) and (d), 1441 and 1446.

18 And then subsequently on December the 4th of 2019, the
19 Defendant Chegg filed a Motion To Compel Arbitration and
20 Dismiss or Alternatively for a Stay, Paper Number 21.

21 Ultimately on April 27th of this year I dismissed
22 without prejudice the Plaintiff's complaint and granted the
23 Defendant's Motion to Compel Arbitration directing the parties
24 to proceed to arbitration which is Paper Number 25.

25 And the purpose of this hearing is to address the

1 Defendant's pending Motion for Clarification or Modification of
2 that order which is Paper Number 26 which was filed in the
3 beginning of August and then triggered another motion from the
4 Plaintiff which is a Motion for Leave to Take Limited
5 Discovery, Paper Number 28.

6 Without getting too deep into the weeds, have I
7 essentially summarized the procedural posture of this case from
8 the point of view of the Plaintiff, Mr.~Zajdel?

9 **MR. ZAJDEL:** Yes, Your Honor.

10 **THE COURT:** Mr. Saudek or whoever is going to speak
11 for Chegg, have I correctly summarized the procedural posture
12 from your point of view?

13 **MR. SAUDEK:** Your Honor, this is Mark Saudek. I
14 believe you have but Mr. Meal will be speaking on behalf of
15 Chegg.

16 **THE COURT:** That's fine. Okay. That's fine. All
17 right. So where we are on this is that essentially I
18 understand Chegg is an entity that provides education materials
19 and services to high school and college students and that the
20 Plaintiff Lyles is a Maryland resident and former Chegg
21 customer who contracted with Chegg while he was a student at
22 the University of Maryland Baltimore County campus.

23 Essentially the -- according to my opinion here, the
24 clicking of the signup button on the Chegg.com website
25 contained an agreement that I previously ruled with respect to

1 the arbitration notice and the terms of use as reflected in
2 Paper Number 21-3 essentially reflected arbitration notice
3 except for certain types of disputes described in arbitration
4 section below: You agree that disputes between you and Chegg
5 will be resolved by binding individual arbitration and you
6 waive your right to participate in a class action lawsuit or
7 classwide arbitration.

8 So based upon my memorandum opinion on April the 27th
9 I essentially ruled that on the only issue before me was
10 whether the parties formed an arbitration agreement and I ruled
11 that they did. And that the Federal Arbitration Act as
12 codified at 9 United States Code Section 1, et seq. governs
13 that agreement and by clicking on the signup button on the
14 Chegg.com website the Plaintiff Lyles agreed to the 2014 terms
15 of use on September 30, 2014, which was reflected in Paper
16 Number 21-6 Paragraph 4 as well as Paper Number 24-4 in the
17 file.

18 And I specifically note that courts opine Maryland law
19 have upheld those kind of clickwrap arrangements and in light
20 of my opinion as noted I determined that there would be a
21 dismissal with respect to these matters that are subject to
22 arbitration.

23 The Defendants have filed essentially a motion for
24 clarification here noting that it contends it no longer has an
25 obligation to arbitrate Plaintiff's claims at all because

1 Plaintiff materially breached the parties' agreement by filing
2 a frivolous arbitration demand for the purpose of imposing
3 onerous or unnecessary cost on Chegg.

4 And specifically it is, apparently released from the
5 papers, it is contended that on April 30, 2020, three days
6 after my memorandum opinion, the Z Law Firm here in Maryland
7 filed some 15,000 separate demands for arbitration with the
8 American Arbitration Association, and that as a result on
9 June 8 the American Arbitration Association informed Chegg that
10 it was responsible for the consumer filing fees associated with
11 these initial demands totaling over \$7.5 million.

12 And then it's contended that on July 1, 2020, the Z
13 Law Firm filed another 1,000 additional demands for arbitration
14 against Chegg including one on behalf of the Plaintiff in this
15 case Lyles, and essentially Chegg is contending that it should
16 not have to pay these fees and it can terminate the account.

17 As I understand it in October -- on October 5th of
18 this year the Z Law Firm filed a petition to compel arbitration
19 in the California Superior Court in Santa Clara County,
20 California, on behalf of 16,351 of the 16,691 individuals on
21 behalf of whom Z filed the American Arbitration Association
22 demands.

23 So as I -- according to my review of the materials,
24 apparently Chegg has moved to stay the proceedings in
25 California pending this Court's determination of Chegg's Motion

1 for Clarification.

2 I think that's a reasonable summary of where we are
3 here on this matter. And with that I'll be glad to hear from
4 counsel for Chegg with respect to the relief that's being
5 sought and then I'll hear from counsel for the Plaintiff.

6 With that I gather, Mr. Meal, you'll be handling this.
7 I'll be glad to hear from you.

8 **MR. MEAL:** Thank you very much, Your Honor.
9 Appreciate the opportunity to present our position to you.

10 Your Honor, I think what I'll do is begin by
11 addressing the arguments that were made in opposition to our
12 motion to the effect that our motion is procedurally improper
13 by reason of the delegation clause contained in the arbitration
14 provision.

15 And secondly I'll then deal with the merits of our
16 position that Chegg has been relieved from any obligation to
17 arbitrate by reason of the material breach of the arbitration
18 revision by Mr. Lyles.

19 **THE COURT:** Mr. Meal, if I could just interrupt you
20 for one second. I just want to make sure I'm clear on one
21 thing. Chegg is a corporation that's incorporated under the
22 laws of Delaware and the principal office of Chegg is in Santa
23 Clara, California. Correct?

24 **MR. MEAL:** Yes, that's correct, Your Honor.

25 **THE COURT:** Okay. All right. Thank you very much.

1 **MR. MEAL:** So in terms of a procedural issue, Your
2 Honor, the starting point I believe is Section 2 of the Federal
3 Arbitration Act and under Section 2, as recognized in the
4 *Rent-A-Center* case from the Supreme Court that is discussed at
5 some length in the parties' briefs, under Section 2 arbitration
6 agreements may be invalidated by generally applicable contract
7 defenses.

8 And the essence of our position on our Motion for
9 Clarification or Modification is that subsequent to Your
10 Honor's ruling on April 27 of this year this particular
11 arbitration agreement was invalidated and rendered
12 unenforceable by virtue of Mr. Lyles' material breach of that
13 agreement which is a generally applicable contract defense.

14 Now, as is discussed in the briefs at length, that
15 general rule under Section 2 of the Federal Arbitration Act
16 that I just referred you to has a limitation in a situation
17 where the arbitration provision in question contains a
18 so-called delegation clause. That is, a clause that reserves
19 for the arbitrator gateway issues of arbitrability including
20 issues of the validity or enforceability of the arbitration
21 provision.

22 In that situation fortunately we have very, very clear
23 guidance, Your Honor, from the Supreme Court in the
24 *Rent-A-Center* case saying that where an arbitration provision
25 contains a delegation clause, as this one here does, Your

1 Honor, that provision -- that provision may be invalidated by a
2 court only where the validity challenge is directed to the
3 delegation clause. So and that's the key distinction that
4 *Rent-A-Center* draws between an enforceability or a validity
5 challenge that's directed to the agreement as a whole versus
6 one that is directed -- at least also directed to the
7 delegation clause.

8 And what the Court said in *Rent-A-Center* very clearly
9 is that as long as the particular challenge under generally
10 applicable contract defenses is directed not just to the
11 agreement as a whole but also specifically, and that's the
12 language of the *Rent-A-Center* case, specifically to the
13 arbitration provision and the delegation clause contained in
14 the arbitration provision then a court may address the issue of
15 the enforceability or the validity of the arbitration
16 provision.

17 Now here, Chegg did expressly direct its validity
18 challenge to the delegation clause. And in fact it's that
19 expressed direction of our argument that the delegation clause
20 is all over our moving brief, Pages 3 and 4, Page 20, Page 26,
21 Page 28. We did that repeatedly in fact going all the way back
22 to your initial letter, Chegg's initial letter, Your Honor,
23 where Chegg exercised its right to cease performance under the
24 agreement and under the delegation clause by reason of
25 Mr. Lyles' material breach.

1 We specifically called out the fact that our challenge
2 was directed not just to the agreement as a whole but
3 specifically the delegation clause in the arbitration provision
4 in question.

5 And again we have teaching on this that's directly on
6 point from the Fourth Circuit in the *Sequoia* case where the
7 Fourth Circuit held that if you do that, if, in making your
8 challenge, you direct it specifically to the delegation clause
9 that's all you need to do in order to meet the requirement of
10 *Rent-A-Center* in regard to making it procedurally appropriate
11 for a court rather than arbitrator to address that challenge.

12 We also have some very, very important teaching from
13 the *Haynes* case from the Fourth Circuit earlier this year. We
14 cite this in our brief. I just want to quote it here because
15 it's so on point for this issue.

16 What the Fourth Circuit said in *Haynes* is, quote, "In
17 specifically challenging a delegation clause a party may rely
18 on the same arguments that it employs to contest the
19 enforceability of -- of other arbitration provisions," closed
20 quote. That's 967 F.3d at 338 from earlier this year from the
21 Fourth Circuit. And that's exactly what we did here, Your
22 Honor.

23 The entirety of our challenge to Mr. Lyles' conduct is
24 directed to his conduct, in our view his misconduct, under the
25 arbitration provision and our agreement with him. So the

1 entirety of our challenge here is directed to the arbitration
2 provision and specifically to the delegation clause in the
3 arbitration provision.

4 We think that's dispositive in terms of the issue of
5 the delegation clause and the issue of whether Your Honor has
6 authority to entertain our challenge to the continued
7 enforceability and validity of the arbitration provision and
8 the terms of use.

9 There's a reference that's made in Mr. Lyles' opposition
10 brief to the fact that the delegation clause here is severable.
11 The severability of the delegation clause is irrelevant to the
12 analysis. *Rent-A-Center* makes that clear. Supreme Court said,
13 quote, "that agreements to arbitrate are severable does not
14 mean that they're unassailable." That's 561 U.S. at 71.

15 And in fact that's the whole point that the Court made in
16 *Rent-A-Center*. Where a delegation clause is severable as long
17 as the challenge that's then leveled, the arbitrability is
18 leveled toward the delegation clause but you satisfied the
19 *Rent-A-Center* test.

20 Here, as severed, the delegation clause contained its own
21 implied covenant of good faith and fair dealing that was
22 breached for the same reason that the arbitration provisions
23 and the terms of uses implied covenants of good faith and fair
24 dealing were breached. And so our argument that we make on the
25 merits fits, we believe, squarely within what *Rent-A-Center*

1 requires in order for a court to be able -- for Your Honor in
2 this case to be able to entertain the arbitrability challenge
3 that we're leveling at this point.

4 Another red herring, Your Honor, in our view is the
5 argument that the arbitration provision here according to the
6 terms of use survives termination, underscoring that word
7 "termination" of the -- of the arbitration provision and
8 termination of the terms of use.

9 That's a red herring, Your Honor, because our argument
10 that we have no continuing obligation under that agreement to
11 arbitrate with Mr. Lyles isn't dependent on -- in fact is in no
12 way related to the fact that Chegg exercise its right to
13 terminate its agreement with Mr. Lyles.

14 Our argument is that Mr. Lyle's material breach relieves
15 Chegg from any future performance obligation under the
16 agreement whether or not Chegg terminated the agreement.

17 So it's the -- it's the material breach that Chegg's right
18 under California law by reason of material breach to cease
19 future performance under the agreement that's the basis for our
20 challenge to arbitrability; not the fact that Chegg separately
21 and independently exercised its right to terminate that
22 agreement.

23 So, Your Honor, that's in substance our argument on the
24 procedural issue. I'm glad to answer any questions you might
25 have on that issue. Otherwise I can turn to what I would call

1 the merits of our arbitrability challenge.

2 **THE COURT:** Mr. Meal, let me just ask you this: I was
3 really not sure what kind of relief you're seeking here. I'm
4 not really sure if I'm still clear on it in that you want
5 clarification that my order was not intended to operate if the
6 underlying agreement is unenforceable, correct?

7 **MR. MEAL:** Yes, Your Honor.

8 **THE COURT:** Then secondarily you seek my review in
9 terms of the determination of enforceability with respect to a
10 merits analysis?

11 **MR. MEAL:** Yes. It's --

12 **THE COURT:** Let me ask you this: Let's assume that
13 with respect to the posture here in terms of preventing
14 manifest injustice under Rule 59(e) of the Federal Rules of
15 Civil Procedure and under Rule 60(a) with respect to this
16 Court's jurisdiction to essentially clarify an ambiguity here
17 that it may be that the Court indicates that my memorandum
18 order of April 27, Paper Number 25, is clearly only operable if
19 the underlying agreement -- is not operable and is not intended
20 to operate if the underlying agreement is unenforceable.

21 But as to the matter of the determination of the
22 enforceability of it, that is within the discretion of the
23 court order, also may lie with respect to the arbitrator,
24 correct?

25 **MR. MEAL:** Well, we would say no in regard to the

1 arbitrator, Your Honor, for the reasons that I just went
2 through that because Chegg has been relieved of any further
3 obligation to -- to arbitrate under the agreement and because
4 Chegg's arbitrability challenge is directed to that arbitration
5 provision and to the delegation clause. You are the entity in
6 the first instance under those circumstances as per
7 *Rent-A-Center* to decide whether or not there's a continuing
8 obligation to arbitrate.

9 **THE COURT:** Well, that amounts to a declaratory
10 judgment action, does it not?

11 **MR. MEAL:** Well, I would think it could, Your Honor.
12 But at the same time I think in the context of not only the
13 fact that you have this case before you and the issue of
14 arbitrability is one that you have already dealt with, in fact,
15 you have jurisdiction to decide arbitrability. I think it's
16 certainly open to you to decide that issue in the context of
17 ruling on our motion.

18 **THE COURT:** Well, I agree that it may or may not be
19 open to me but in terms of -- it seems to me the justifiable
20 mechanics here given that your client has its principal office
21 located in Santa Clara, California, and in light of the fact
22 that there are proceedings already in the California Superior
23 Court in Santa Clara County, it would seem to me that, I know
24 that you moved to stay those proceedings pending my
25 determination or clarification here, it would seem to me that

1 the matter of the merits in the form of a declaratory judgment
2 action of whether or not there is even an agreement that's
3 enforceable would best lie in that court. It would be the most
4 expeditious way of handling it it seems to me.

5 It doesn't preclude you from arguing that, but it
6 basically would clarify that my order with respect to
7 arbitration is strictly based upon the fact that there is an
8 enforceable arbitration agreement. And if the underlying
9 agreement is unenforceable then essentially -- you're asking
10 for two things here. One of which I understand and the other
11 of which I think is a stretch if I can just be candid with you
12 on this.

13 You're asking me to clarify in an order to say that
14 the order was not intended to operate if the underlying
15 agreement itself is unenforceable. And clearly, I'll hear from
16 Plaintiff's counsel in a minute, but I certainly understand
17 that request in light of what I understand to have been the
18 procedural steps taken here; and particularly in light of the
19 fact that there are now consumer filing fees associated with
20 these various demands approaching over 7.\$5 million.

21 But I don't know that the determination in
22 enforceability therefore is just left to me. It may be left to
23 an arbitrator or quite frankly it's a matter of an action there
24 in the Superior Court for Santa Clara County.

25 Would that not make more sense for your client?

1 **MR. MEAL:** Where I would disagree with that
2 respectfully, Your Honor, is that Mr. Lyles is not a party to
3 the proceeding in California. Mr. Lyles is a party to this
4 action and Your Honor has jurisdiction over this action and
5 Your Honor has jurisdiction over Mr. Lyles.

6 And so for us to get a ruling that we have no
7 obligation to arbitrate with Mr. Lyles, we think the
8 appropriate thing is for you to rule on that. The California
9 court doesn't have any ability to rule on that because
10 Mr. Lyles isn't a party to that action and you have the ability
11 to rule on that here in this action. So that's why we thought
12 it was appropriate, Your Honor, to present the issue of whether
13 or not Chegg had a continuing obligation to arbitrate with
14 Mr. Lyles before you.

15 **THE COURT:** Well, let me just get to the facts of
16 this. Very simply just as to Mr. Lyles and not the 15,000
17 separate demands made earlier or the other 1,000 demands.

18 As to Mr. Lyles in terms of seeking arbitration, you
19 can certainly present to the arbitrator the fact that there is
20 no enforceable agreement because of the alleged sins committed
21 by Mr. Lyles. Could you not? That could happen in any kind of
22 context.

23 **MR. MEAL:** I think we -- I think actually we could not
24 because we -- there is no longer any enforceable arbitration
25 agreement between us and Mr. Lyles for all the reasons that we

1 said.

2 And also an approach, Your Honor, under which we were
3 going to present to an arbitrator the issue of whether there's
4 an enforceable agreement between ourselves and Mr. Lyles or
5 between ourselves and any of Mr. Lyles' fellow claimants would
6 in essence defeat the whole purpose of the arbitrability
7 challenge that we're presenting here because that whole purpose
8 of that arbitrability challenge is to make sure that Chegg
9 doesn't incur the arbitration fees that we say, Your Honor,
10 should not be imposed on us.

11 And so in our view the appropriate course is, in
12 regard to Mr. Lyles, since Mr. Lyles is before this Court and
13 there's jurisdiction over Mr. Lyles in this Court; since we
14 don't have any obligation to arbitrate with Mr. Lyles any
15 longer; since Mr. Lyles isn't a party to the subsequently
16 commenced California action, the Court -- this Court should be
17 the -- decide because at this moment in time this Court is the
18 only court that has jurisdiction to decide that issue.

19 **THE COURT:** Well then let's assume you prevail as to
20 Mr. Lyles. My ruling on Mr. Lyles has absolutely nothing to do
21 with the 15,000 separate demands for arbitration with the AAA
22 filed on April the 30th by the law firm here, the Z Law Firm in
23 Maryland. And it has nothing to do with the 1,000 additional
24 demands for arbitration that happen to include among those one
25 thousand Mr. Lyles. It only relates to Mr. Lyles, correct?

1 **MR. MEAL:** It's likely, Your Honor. Although we
2 haven't, we're not sure about this, we haven't fully researched
3 this. Would be -- certainly Your Honor is correct that it
4 would be at a minimum questionable whether it would be anything
5 more than *stare decisis* effect as to Mr. Lyles' fellow
6 claimants. I agree with that.

7 I can't say definitively that there's nothing more
8 than the *stare decisis* effect. But certainly Your Honor is
9 correct that there'd be a serious question as to whether there
10 would be anything more than *stare decisis* effect by reason of
11 Your Honor's ruling.

12 But having said that, Your Honor, the *stare decisis*
13 effect of your ruling could be quite significant. And in fact
14 the California judge indicated that he was hopeful that you
15 will rule on this issue because he would want to have the
16 benefit of your ruling in his mind when he rules on the issues
17 that are before him in California.

18 **THE COURT:** All right. Well, with that, let me hear
19 from Mr.~Zajdel.

20 Mr.~Zajdel, I'll be glad to hear from you.

21 **MR. ZAJDEL:** Sure, Your Honor. With respect to the
22 application of the delegation clause and Chegg's attempt to
23 bypass the delegation clause and citing to Supreme Court
24 opinions, Chegg is correct that they did say the words
25 "challenge the delegation clause" throughout their brief but

1 they don't actually challenge the delegation clause. There is
2 no challenge to the delegation clause. They try to bypass
3 binding Supreme Court precedent by just saying that they're
4 challenging the delegation clause.

5 But it's important to look at what the actual text of
6 the delegation clause says and I'm just going to read from the
7 arbitration agreement: You and Chegg agree that any dispute,
8 claim or controversy arising out of or related to these terms
9 of use or the breach, termination, enforcement, interpretation
10 or validity thereof will be settled by binding arbitration.

11 That's the delegation clause.

12 Chegg has not made any argument that Mr. Lyles
13 breached anything in that clause. What Chegg did was they made
14 a general contractual argument that Mr. Lyles breached the
15 terms of use by filing an arbitration for damages above the
16 amount that they think is fair. And that he breached his
17 arbitration agreement by failing to waive a contractual right
18 provided to him by Chegg to have his individual claim filed
19 individually and not arbitrated on a group basis.

20 So to the extent that we're talking about the
21 delegation issue, Chegg has this all wrong and the foundational
22 argument that they've challenged the delegation clause is
23 inaccurate. They have not made any challenge to the delegation
24 clause. They've just told Your Honor that they're challenging
25 the delegation clause. That's not sufficient. Okay.

1 That's -- with respect to the delegation clause we
2 would -- if Your Honor has questions for me with respect to
3 that issue I'm happy to answer but I think our brief covers
4 that.

5 I do want to speak on the issue of -- I'm sorry. I do
6 want to speak on the issue of the survival clause because we
7 don't understand what it is that Chegg thinks it gets from an
8 order saying that the terms of use are no longer valid because
9 the place that's going to wind up deciding these issues is an
10 arbitrator. Because a survival clause specifically requires
11 that the legal dispute section live on regardless of what
12 happens with the terms of use, regardless of whether there's a
13 breach or not, regardless of what conduct occurs those disputes
14 are being decided by an arbitrator because they live on
15 forever.

16 And Chegg hasn't provided the Court with any -- any
17 type of authority other than its say so that the survival
18 clause just goes away. And we've briefed that issue as well.

19 I also wanted to bring up the fact which wasn't a big
20 highlight in our brief but I think the court should be
21 considering this that under the triple A's rules, and this goes
22 to Chegg's merits argument, that Lyles breached his terms of
23 use by filing a frivolous arbitration and joining it with other
24 people to exceed costs.

25 According to the triple A's rules, Lyles hasn't done

1 anything. Triple A's rule for filing of an arbitration
2 specifically states that no arbitration is commenced and no
3 arbitration is initiated until you've -- until the claimant
4 satisfies the administrative requirements for triple A, which
5 is the filing of a demand and service of a demand, and the
6 complete filing fee is paid.

7 It's no different than when you file an action in your
8 court, Your Honor. You can't just file a complaint in court
9 and have the court consider it. It's not filed until the
10 filing fee is paid. I know that because I've had that happen
11 in the Circuit Court of Maryland where we filed a complaint, we
12 didn't have the proper filing fee, and it was sent back to me.
13 Nothing occurred. There was no filing. No action had been
14 taken.

15 So according to all the facts before Your Honor, even
16 though Chegg tells you there was a breach because there is
17 these onerous filing fees and because Jabari Lyles took all
18 these actions, in actuality nothing has happened.

19 He could not have breached an agreement because no
20 action is pending. No action is filed. No action is
21 initiated. Triple A has said that repeatedly in their letters
22 which are before the Court. They will not initiate the claim
23 until the filing fee is paid.

24 So to the extent Chegg is relying on actions taken by
25 Mr. Lyles those arguments are without support from the very

1 venue where the action supposedly was pending.

2 **THE COURT:** Well I understand that according to the
3 papers filed by Chegg that your client demanded \$25,000 in his
4 arbitration demand.

5 **MR. ZAJDEL:** That is correct.

6 **THE COURT:** And I gather -- have you filed 15,000
7 separate demands for arbitration with the AAA?

8 **MR. ZAJDEL:** Your Honor, my -- correct. My law firm
9 has filed more than 16,000 demands for arbitration with the
10 Triple A.

11 **THE COURT:** And as to that, the Triple A has informed
12 Chegg and/or anyone else that it was responsible for these
13 filing fees, correct? The AAA advised Chegg of that; is that
14 correct?

15 **MR. ZAJDEL:** That's correct. And those are the
16 letters that I believe Mr. Meal attached to his memorandum.
17 Yes. True. And in those letters --

18 **THE COURT:** You filed a total -- you filed essentially
19 some 16,000 demands for arbitration against Chegg only one of
20 which is from Mr. Lyles; is that correct?

21 **MR. ZAJDEL:** That's correct. Mr. Lyles has an
22 individual arbitration filed under his own name with his own
23 demand for arbitration which was served on the triple A and on
24 Chegg. And his demand for arbitration requests his damages for
25 himself, yeah.

1 **THE COURT:** I understand. So the point of it is
2 that -- and Chegg would be responsible, correct me if I'm
3 mistaken, as I understand it Chegg is then responsible for some
4 over \$7.5 million in consumer filing fees for which it's
5 responsible; is that right?

6 **MR. ZAJDEL:** That is correct, Your Honor. That is the
7 contractual arrangement that Chegg made with its customers.

8 **THE COURT:** I understand. Essentially and you
9 solicited all of these various demands through the offices of
10 Mr. Lyles; is that right?

11 **MR. ZAJDEL:** That is incorrect, Your Honor.

12 **THE COURT:** All these people called your law firm to
13 ask you to represent them?

14 **MR. ZAJDEL:** No, my apologizes, Your Honor. Part of
15 what you're saying is correct --

16 **THE COURT:** I asked you specifically, Mr.~Zajdel, you
17 obviously solicited \$16,000 people.

18 **MR. ZAJDEL:** Well, I can't agree that I solicited
19 because solicited is --

20 **THE COURT:** Let me make a different phrase.

21 **MR. ZAJDEL:** -- I marketed --

22 **THE COURT:** Let me make a different phrase to be fair
23 to you. Without question 16,000 people did not call your law
24 firm here in Maryland and ask you to represent them initially
25 to file these complaints. That at some point in time you

1 marketed your services of the law firm with respect to 16,000
2 people, one of whom is Mr. Lyles, to file demands for
3 arbitration in connection with the merits that you postured as
4 to this case, correct?

5 **MR. ZAJDEL:** I still have to disagree with that and I
6 will explain. The individuals, other than Mr. Lyles, I will
7 agree, yes, those -- those clients were retained by my law firm
8 through marketing.

9 **THE COURT:** All right.

10 **MR. ZAJDEL:** Mr. Lyles was not part of that group.
11 His action was filed -- he was -- he -- he signed a retainer
12 agreement with my law firm to represent him as a main plaintiff
13 in a class action which is what we filed on his behalf.

14 **THE COURT:** Obviously the people that you -- the
15 16,000 people who you have indicated clearly did not call you
16 but you, quote, "marketed", end of quote. That process started
17 three days after I filed my memorandum order granting the
18 Motion to Dismiss because you had sought to file a class action
19 here with respect to Mr. Lyles, on behalf of Mr. Lyles and
20 others similarly situated with respect to the data breach here
21 in this case, correct?

22 **MR. ZAJDEL:** It's correct to the extent that we wanted
23 to participate -- we wanted to move forward on the class action
24 basis for Mr. Lyles.

25 **THE COURT:** I understand. And that class action basis

1 would have included presumably these 16,000 claims by 16,000
2 other people?

3 **MR. ZAJDEL:** Yes, Your Honor, that's correct.

4 **THE COURT:** All right. And the reason I ask that is
5 because the -- with respect to a standard of review or
6 reconsideration of a judgment after its entry, with respect to
7 Fourth Circuit law and even some references in Federal Practice
8 and Procedure by Professor Wright is that Rule 59(e) provides
9 for a motion to author or amend a judgment within 28 days of
10 the judgment but doesn't necessarily clearly provide for a
11 standard for determining when such a motion should be granted.

12 The Fourth Circuit has previously ruled that in
13 *Pacific Insurance Company versus American National Fire*
14 *Insurance*, 148 F.3d 396, an opinion of the Fourth Circuit 1998,
15 essentially there were -- that's a Fourth Circuit opinion in
16 1998.

17 Essentially at 148 F.3d at 403 it's noted that there
18 are three grounds for amending the judgment. It's one, to
19 accommodate an intervening change in controlling law; two, to
20 account for new evidence not available at trial; or to correct
21 a clear error of law or to prevent manifest injustice is the
22 language that's used by the Fourth Circuit.

23 And Rule 60(a) of the Federal Rules of Civil Procedure
24 provides that a court can correct a clerical mistake or a
25 mistake arising from oversight or omission whenever one is

1 found in a judgment order or other part of the record and the
2 Fourth Circuit in *Sartin versus McNair Law Firm*, PA, 756 F.3d
3 259, discussion at Page 266 a Fourth Circuit opinion in 2014
4 specifically noted that -- the Fourth Circuit noted that a
5 district court may also correct an unintended ambiguity that
6 obfuscates the Court's original intent.

7 So I am analyzing this in terms of the matter of an
8 unintended ambiguity that obfuscates the Court's original
9 intent. And I interpreted this motion by the Defendant Chegg
10 to be to clarify that the order should be somehow amended or
11 clarified so that it is not intended to operate in a situation
12 where the agreement upon which the order was predicated is no
13 longer enforceable.

14 So Mr. Meal has suggested that this necessarily requires
15 me to make a determination of whether or not the agreement is
16 enforceable or not or whether it should be determined by an
17 arbitrator.

18 Now, in terms of the issue of whether or not this Court
19 should determine issue of enforceability or whether or not it
20 should be determined by an arbitrator, the class that you
21 proposed here in this litigation of now apparently some 16,000
22 people which as you said your firm, quote, "marketed," end of
23 quote, whether it's marketed or whether solicited is another
24 matter, presumably that was the class that you would seek for
25 certification.

1 And what is before me is the fact that to the extent that
2 there are individual motions to arbitrate pursuant to the
3 American Arbitration Association rules it appears that the
4 posture of this now is that there are literally 7 point -- over
5 \$7.5 million in fees that will be required of Chegg with
6 respect to just a matter of proceeding with arbitration.

7 Is that a correct summary, Mr.~Zajdel?

8 **MR. ZAJDEL:** Well, I -- I -- it's partially correct
9 but it's partial -- I believe it's partially incorrect in that
10 Your Honor entered a dismissal without prejudice. There is no
11 class. There is nobody before the Court except for Mr. Lyles
12 and all the other people that we represent are currently in
13 court in California. Whatever Your Honor decides to do with
14 this motion that order is going to impact Mr. Lyles and
15 Mr. Lyles only.

16 Mr. Lyles is the only party before the Court and we
17 still are having trouble grasping what it is that Chegg gets
18 out of the first portion of what they're asking for,
19 clarification that if there's an unenforce-- that the order is
20 not supposed to be applicable to an unenforceable agreement.
21 You don't need a court to say that.

22 The idea of whether or not the arbitration agreement
23 is enforceable is an issue that arises in arbitration. So I --
24 I don't understand the basis of having a court make a
25 clarification to state that.

1 I think what Chegg is really here for is for the Court
2 to make an order saying that because of the actions that
3 Mr. Lyles took or didn't take that they don't have to arbitrate
4 with anyone. That's what they want is they want an order from
5 this Court that although pretends to be for Mr. Chegg would be
6 for everyone. And there is no one before the Court other than
7 Mr. Lyles. That was my first point of disagreement.

8 The other side of it is almost all, if not all of the
9 cases that Your Honor cites to and that Chegg refers to in
10 their briefs, they all have to do with final judgments and
11 there's no judgment in this case. There is an order enforcing
12 a contract. That is essentially what the Court's Motion To
13 Compel -- ruling on a Motion To Compel Arbitration is, is an
14 order forcing the person out of court by enforcing an
15 arbitration agreement.

16 So the Court has already enforced an arbitration
17 agreement. Now the question of whether it remains enforceable
18 is a question for the arbitrator and the delegation clause
19 would -- in order for the Court to find -- to provide Chegg
20 with the relief that it's asking for under Rule 60 the Court
21 needs to make so many merits determinations, so many factual
22 and legal determinations that it makes a mockery out of
23 arbitration agreements. Because in order to even get to
24 whether or not the demand -- the demand of \$25,000 is frivolous
25 which is what Chegg argues because one of their two linchpins

1 of why there's a -- the agreement is terminated for breach of
2 good faith and fair dealing, the Court first needs to find --
3 have a trial on issues of liability and damages, make factual
4 determinations related to the data breach, the efforts that
5 Chegg undertook to protect consumers, whether and to what
6 extent Lyles suffered damages, and then make legal findings
7 with respect to the disclaimer and liability -- limitations of
8 liability clauses and the enforceability of those clauses
9 within the terms of use. And only after all those
10 determinations can the Court come to the conclusion that Lyles
11 filed a frivolous arbitration.

12 So what Chegg's asking you to do is to have the
13 arbitration here in court, to have the arbitration in court so
14 that they don't have to have an arbitration.

15 Then the other side of it is they want the Court to
16 make the decision that Lyles took steps to make his arbitration
17 prohibitively expensive to Chegg. But once the Court cuts
18 through the fact that all the other people filed arbitrations
19 and that those fees are due for the other people's
20 arbitrations, the Court will see that Chegg contractually
21 agreed to pay arbitration fees rather than deal with class
22 actions and other actions in court.

23 So no matter how Lyles filed his arbitration, Chegg
24 had contractually agreed to pay all the filing fees. Whether
25 it's 3,400, 4,900, whatever that amount is Chegg agreed to pay

1 that.

2 So for Chegg to come into court and say he breached
3 the agreement by forcing us to pay the \$3,400 is a really
4 out-there argument. That's the amount of money that the triple
5 A charges for an arbitration. It's publicly available and it's
6 what Chegg included in the arbitration agreement.

7 So Chegg is trying to make this assertion that all
8 these fees make it necessary for the Court to take action for
9 Chegg now but all the fees that have been presented to the
10 court have nothing to with Jabari Lyles.

11 Jabari Lyles filed his case in court and wanted to
12 move forward on classwide basis in court and opposed
13 arbitration. It wasn't until after the Court ruled that he had
14 to arbitrate that he went and filed the arbitration.

15 So Chegg is now asserting that he has breached his
16 contract by doing what the Court told him he had to do.

17 So, I mean, even if the Court gets to the merits of
18 the argument it doesn't sound true to Mr. Lyles. Mr. Lyles did
19 nothing that increased the cost of arbitration to Chegg.

20 Chegg's only argument with respect to these expenses
21 have to do with the people that my law firm represent refusing
22 to agree to consolidate their case and file it as one action.
23 And the arbitration agreement speaks to this. It says that --
24 it says that unless both you and Chegg otherwise agree, the
25 arbitrator may not consolidate more than one person's claims

1 and may not otherwise preside over any form of any class or
2 representative proceeding.

3 So Chegg says, well, you could have -- you could have
4 filed them all as one claim. If you would have agreed, because
5 Chegg agreed to do this, if you would have agreed, meaning
6 Mr. Lyles, if he would have agreed to proceed with the other 16
7 and a half thousand people in one claim then it only would have
8 cost them \$3,400.

9 Well, that's not a foregone conclusion first of all
10 because triple A hasn't said that they would take that type of
11 arbitration and only charge \$3,400. But putting that aside,
12 Mr. Lyles does not -- is not required to waive his contractual
13 right because Chegg decided that it was going to pay for filing
14 fees. That would be like us coming into court and filing a
15 class action and then when Chegg asserts its right to
16 arbitration we write to Chegg and say, "Excuse me, Chegg, we
17 demand that you withdraw your Motion To Compel Arbitration
18 because we want to be in court."

19 **THE COURT:** Let me ask you this, Mr.~Zajdel, with
20 respect to the Motion for Clarification doing the first half as
21 opposed to the second half, if the Court were to say that the
22 order with respect to that there is an arbitration agreement,
23 and I have found in my order clearly that by clicking on the
24 signup button that your client, Mr. Lyles, agreed to the 2014
25 terms of use on September 30, 2014; and then noting that courts

1 opine Maryland law have upheld such clickwrap agreements. That
2 if the clarification is simply that, that based upon the
3 existence of a contract that the opinion was based upon an
4 enforceable agreement but I make no finding as to
5 enforceability and leave that to another forum. That
6 essentially grants the Plaintiff, I mean grants Chegg, a part
7 of what it desired. But the matter of the determination of
8 enforceability is left to another forum and it's up to another
9 forum, be it an arbitration or the -- for that matter the --
10 essentially the Superior Court in Santa Clara County to
11 determine enforceability.

12 What you have summarized to me I think is not at
13 variance with that; is that correct?

14 **MR. ZAJDEL:** That's correct. Yeah, that's correct,
15 Your Honor. We don't think what Chegg has asked in their first
16 part of the relief does anything to change anything. It just
17 says --

18 **THE COURT:** I understand.

19 **MR. ZAJDEL:** -- yeah, what everyone agrees to that of
20 course --

21 **THE COURT:** The point is is that I just said that
22 there's a contract and that there is essentially the only issue
23 before me as I noted back in April was whether the parties
24 formed an arbitration agreement. And I have held that yes they
25 did and they formed an arbitration agreement. And therefore

1 there's an arbitration agreement and accordingly I granted the
2 motion of the Defendant to compel arbitration and it's granted
3 and the parties will proceed to arbitration. That relates to
4 Mr. Lyles and no one else. And the case here as to Mr. Lyles
5 was dismissed without prejudice.

6 With respect to whether or not there's some basis to
7 find that there's a breach, that there is a breach of
8 essentially that agreement, that there is an arbitration
9 agreement but a view that there has been a breach of the
10 arbitration agreement, that could be left to another forum and
11 you have no objection to that, correct?

12 **MR. ZAJDEL:** That's correct, Your Honor. In fact --

13 **THE COURT:** Mr. Meal, let me ask you this: You had --
14 you can have clarification here that clearly it's predicated
15 that I found there's an arbitration agreement and it's
16 predicated upon whether or not there's been a breach of an
17 arbitration agreement.

18 You're not asking me to reverse *Field* in terms of my
19 ruling with respect to the fact that there's an arbitration
20 agreement. You are asking me essentially to say -- to clarify
21 that not only there was an arbitration agreement but there has
22 been a breach of the arbitration agreement.

23 In a nutshell that's what you're asking, correct?

24 **MR. MEAL:** Yes, Your Honor.

25 **THE COURT:** All right. And still the fact of the

1 matter is is that there's no jurisdiction as far as I'm
2 concerned nor do I choose to exercise jurisdiction to do that.
3 That the record will reflect here for the reasons set forth on
4 the record that I certainly have granted the Defendant's Motion
5 for Clarification. I'm going to deny the motion -- Plaintiff's
6 Motion for Leave to take Limited Discovery on this issue.

7 It's really quite simple. I'm providing clarification
8 that I have found that there was clearly, under Maryland law,
9 there was clearly here an arbitration agreement which was
10 formed between Mr. Lyles and Chegg, without question. And I
11 have found that the Federal Arbitration Act as codified at 9
12 United States Code Section 1 F.2d governs that arbitration
13 agreement. And I have noted that by clicking on the signup
14 button on the Chegg.com web site that Mr. Lyles agreed to the
15 2014 terms of use on September 30, 2014. Whether or not that
16 triggers a winning argument that he's breached it, I don't
17 know. It's not before me.

18 And applying Maryland law, which have upheld those
19 kind of clickwrap agreements, consistent with this Court's
20 earlier opinions in *CoStar Realty Info versus Field*, 612 F.
21 Supp. 2d 669, a 2009 opinion of this Court, as well as an
22 opinion I had in 2011 in *Fusha versus Delta Airlines* which is
23 2011 Westlaw 3849657, there was clearly essentially that
24 Mr. Lyles had noticed that a click on that clickwrap agreement
25 manifested an assent to an agreement. So there was an

1 arbitration agreement that was agreed upon. And that is how
2 I've ruled and I -- no one is asking me to change that and I'm
3 not changing it. I'm not reconsidering it. Nor is that really
4 what the request is.

5 I'm clarifying that I have found that there is an
6 agreement. I have not ruled upon the enforceability of that
7 agreement and whether or not there has been any breach of it in
8 any way and that is open to another forum, be it the state
9 court in Santa Clara County, California, or be it an
10 arbitrator. That's really not before me.

11 So I'm certainly willing to clarify that in that
12 fashion and a transcript of these proceedings can be prepared
13 and requested of Ms. Thomas, Ronda Thomas here, the court
14 reporter, who if counsel want a transcript to be prepared she
15 could prepare one. And you would -- I'm trying to make my
16 ruling as clear as I can for my judicial colleague out in the
17 Superior Court for Santa Clara, California, or any arbitrator
18 who looks at this.

19 Now, you haven't gotten all of your relief, Mr. Meal,
20 but you've certainly got clarification as to that, correct?

21 **MR. MEAL:** I appreciate the clarification, Your Honor.
22 I just want to make one point and I understand that --

23 **THE COURT:** Just if I can, let me just -- okay, if you
24 agree that's a clarification and, Mr.~Zajdel, from your point
25 of view that's a clarification to which you don't take any

1 exception?

2 **MR. ZAJDEL:** That's correct, Your Honor.

3 **THE COURT:** That's where we are.

4 Yes, go ahead Mr. Meal.

5 **MR. MEAL:** I just want to make one point, Your Honor,
6 so the record's clear on this. In terms of leaving the issue
7 of arbitrability as to Mr. Lyles to another forum, Your Honor
8 mentioned California, Santa Clara, Your Honor mentioned
9 arbitration. Just so it's clear we have no jurisdiction to
10 bring a proceeding against Mr. Lyles in Santa Clara. There's
11 no jurisdiction over him there. And number two, there is no
12 way to bring that before an arbitrator because there's no, in
13 our view, no longer any arbitration provision.

14 So the other forum respectfully, Your Honor, in our
15 view would be your court where there is jurisdiction over
16 Mr. Lyles.

17 So I totally understand where Your Honor is headed
18 with today's ruling but to the extent we would need to go
19 somewhere to obtain a ruling on this issue as to Mr. Lyles I
20 would think we would be certainly potentially headed back to
21 your court.

22 **THE COURT:** And without addressing that precisely I
23 think you're correct. You could certainly file a declaratory
24 judgment action based upon diversity of citizenship with
25 respect to a client, with respect to a contract you have with

1 anyone in Maryland with respect to your contention that there
2 has been a breach of an existing contract.

3 And if you file such an action you should certainly
4 file that it's a related case in light of my having addressed
5 this case in Case Number 19-3235 and the clerk would assign it
6 to me and I would agree to take it.

7 **MR. MEAL:** Understood, Your Honor. I understand. And
8 I appreciate that clarification so thank you.

9 **THE COURT:** All right. And Mr.~Zajdel, as to that,
10 there's no question that there could be a declaratory judgment
11 action filed in terms of whether or not there is an enforceable
12 contract between Mr. Lyles and Chegg and could be litigated in
13 that fashion, correct?

14 **MR. ZAJDEL:** Happens all the time, Your Honor. I
15 might take issue with the forum but, yes, a declaratory
16 judgment action could certainly resolve that issue.

17 **THE COURT:** And there would be diversity of
18 citizenship with respect to assuming Mr. Lyles is still a
19 resident of --just one second here if I can, wait a minute.

20 **MR. ZAJDEL:** He is a resident of Maryland.

21 **THE COURT:** He's a resident of Maryland and to the
22 extent that an out-of-state company is suing an individual in
23 Maryland they can seek the -- file on basis of diversity of
24 citizenship and seek a -- file a declaratory judgment action
25 and we can go from there.

1 So if such is filed someone should just note
2 Mr.~Saudek is obviously very, very experienced here in our
3 court as is Mr.~Zajdel and you certainly can, Mr.~Saudek, you
4 can note it's a related case and the clerk will assign it
5 accordingly if there's a related case and it probably would
6 clearly be assigned to me.

7 Then I will have to deal with the issue of
8 enforceability specifically as between Mr. Lyles and Chegg.
9 Having no class action ramifications at all. I would deal just
10 with Mr. Lyles and Chegg Incorporated.

11 Okay. So I think we've reached a common ground here.
12 My chambers will prepare an order here. Ms. Tyson, we'll
13 handle this from chambers here noting that we've conducted a
14 hearing, we've reviewed the submissions of the parties, and for
15 the reasons set forth on the record here today the Motion for
16 Clarification was granted and clarification was provided here
17 at the hearing and is set forth on the record. So Paper Number
18 26 will be granted.

19 And Paper Number 28, the Plaintiff's Motion for Leave
20 to Take Limited Discovery, will be denied as moot. And I will
21 sign that order and get it filed tomorrow and that will -- I
22 won't say it's the end of the matter but it deals with this
23 portion of it.

24 Is there anything else from the point of view of --
25 given that Chegg was the moving party here initially, is there

1 anything else, Mr. Meal or Mr.~Saudek, from your point of view?

2 **MR. MEAL:** Nothing else from me, Your Honor, and we're
3 very appreciative of your time today.

4 **THE COURT:** All right. Thank you very much. Anything
5 else, Mr. Zajdel, from your point of view?

6 **MR. ZAJDEL:** No, Your Honor. Thank you for hearing
7 us.

8 **THE COURT:** By the way, Mr.~Saudek, I wasn't trying to
9 be critical when I was talking about marketing or soliciting.
10 I mean it's perfectly clear that 16,000 people didn't call your
11 law firm. You know, essentially if you did it's a heck of a
12 marketing effort. I'll tell you we're laughing here.

13 But you filed an action that appeared to be a class
14 action and the Defendant responded by essentially applying the
15 fact that there is a binding arbitration agreement. There's a
16 contract. And so this matter could not be -- this matter could
17 not proceed in the form of a class action with everyone
18 together in one cause of action in light of the motion filed by
19 Chegg initially to compel arbitration which I granted. And
20 this -- the case as to Mr. Lyles was dismissed without
21 prejudice. So that's where we are. I think we're pretty clear
22 on everything else.

23 So thank you all very much and everyone stay safe out
24 there in the pandemic.

25 (All Counsel - "Thank you, Your Honor.")

THE COURT: That concludes the hearing.

THE CLERK: This Honorable Court is now adjourned.

(Hearing adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Professional Reporter,
Certified Realtime Reporter, in and for the United States
District Court for the District of Maryland, do hereby certify,
pursuant to 28 U.S.C. § 753, that the foregoing is a true and
correct transcript of the stenographically-reported proceedings
held in the above-entitled matter and the transcript page
format is in conformance with the regulations of the Judicial
Conference of the United States.

Dated this 11th day of December 2020.

Ronda Thomas

RONDA J. THOMAS, RPR, CRR

FEDERAL OFFICIAL COURT REPORTER

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